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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/807,365	03/23/2004	Derek Metcalf	38949/295702	3952
23370	7590	10/23/2006	EXAMINER	
JOHN S. PRATT, ESQ KILPATRICK STOCKTON, LLP 1100 PEACHTREE STREET ATLANTA, GA 30309			NOVOSAD, JENNIFER ELEANORE	
			ART UNIT	PAPER NUMBER
			3634	

DATE MAILED: 10/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/807,365

Applicant(s)

METCALF, DEREK

Examiner

Jennifer E. Novosad

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 September 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15, 18 and 19 is/are pending in the application.
- 4a) Of the above claim(s) 1-8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 9-15, 18 and 19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

This final Office action is in response to the amendment filed September 22, 2006 by which claims 9, 11, and 14 were amended, claims 16 and 17 were canceled, and claims 18 and 19 were added.

#### ***Election/Restriction***

Claims 1-8 *stand* withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to nonelected inventions and species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on May 9, 2006.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 19 is rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,205,421 (Bustos '421).

Bustos '421 discloses a shelving unit comprising a generally planar shelf (7) comprising at least two attachment members (one is shown in Figures 4-6) extending from the shelf (7) and each comprising a top mounting rail, i.e., a structural member or support (see Webster's Dictionary, 10<sup>th</sup> edition) (56) and a bottom mounting rail (57); an upper mounting pin (78)

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extends downwardly from the rear edge of the top mounting rail (56) and a lower mounting pin (including the portion of 88 between 88b and 88a) extends downwardly from the rear edge of the bottom rail (57) whereby the pins (78 and 88) are offset from one another (see Figure 6); a support frame comprising two vertical members (6a and 6b) each comprising a plurality of evenly spaced openings (79) formed in a front receiving surface; the shelf (7) is mountable to the support frame (see Figure 1) by inserting the upper pins (78) into first openings (79) in the members (6a and 6b) and the lower pin (88) is selectively able to be positioned against the front receiving surface (see Figure 5) so that the shelf is in a substantially horizontal orientation or inside second openings (79) causing the shelf to be oriented in a substantially forward sloping orientation (Figure 6).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9-15 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,205,421 (Bustos '421) in view of U.S. Patent No. 5,133,463 (Merl '463).

Bustos '421 discloses the unit as advanced above and *with respect to claim 10*, relative positioning of the lower pin (88) determines the angle of forward slope of the shelf; *with respect to claim 11*, each pin (78 and 88) comprises a single bend; *with respect to claim 14*, the rails and

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pins comprise a one-piece structure, i.e., once assembled; and *with respect to claim 15*, the top rail (56) is longer than the bottom rail (57).

The claims differ from Bustos '421 in requiring: (a) the depth of the shelf to be able to be increased/decreased (claim 9); (b) the front edge of the shelf to be bent upwards at a right angle (claim 12); (c) the front edge of the shelf to include a frame (claim 13); and (d) the shelf, rails, and pins to include a single wire structure (claim 18).

Merl '463 teaches an adjustable wire shelf whereby the depth *may* be adjusted and comprising a front edge that bends upwards at a right angle whereby a frame (10) could be used for displaying indicia, such as a sticker.

*With respect to (a)*, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the unit of Bustos '421 with the adjustable wire shelf as taught by Merl '463, for increased storage capabilities and capacity, since the depth of the shelf can be increased or decreased to accommodate the quantity of items stored thereon.

*With respect to (b) and (c)*, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have had the shelf having an upturned front edge defining a frame, as taught by Merl '463 for increased ease to the consumer since the edge would store and hold items placed therein while displaying information thereabout.

*With respect to (d)*, *insomuch as the claims are best understood (in view of the Section 112, 2nd paragraph rejections advanced above)*, Merl '463 and Bustos '421 together define the claimed structure, thereby increasing ease in economy and manufacture.

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***Response to Arguments***

Applicant's arguments filed September 22, 2006, with respect to claims 9-15, have been fully considered but they are not persuasive.

Applicant's arguments (see pages 10-12) concerning the "intricate bracket system" of Bustos and that "Manufacturing... by Bustos can be expensive and difficult. By contrast, the present design provides for more efficient manufacturing that can be accomplished less expensively", have been considered. *However*, applicant has failed to distinctly point out the claimed differences between the invention and the prior art. *Further*, applicant's arguments (see page 12) that "there are only two mounting pins to be inserted into the support frame" have been considered are not commensurate with the scope of the claim and therefore are more limiting than what is actually being claimed.

Applicant's arguments (see page 14) that "one can simply slide the shelf portions of the claimed invention with respect to one another to adjust them" are acknowledged. *However*, these arguments are more limiting than what is actually being claimed and therefore are not commensurate with the scope of the claim.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

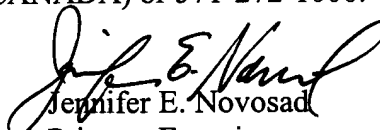
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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Novosad whose telephone number is 571-272-6832. The examiner can normally be reached on Monday-Thursday, 5:30am-4:00pm. .

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Cuomo can be reached on 571-272-6856. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Jennifer E. Novosad  
Primary Examiner  
Art Unit 3634

October 17, 2006